

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JORDAN R. LYBARGER,

Defendant.

4:15-CR-3125

ORDER

This matter is before the Court on the defendant's motion for compassionate release pursuant to [18 U.S.C. § 3582\(c\)\(1\)\(A\)](#). [Filing 51](#). The defendant's motion will be denied.

Pursuant to [§ 3582\(c\)\(1\)\(A\)\(i\)](#), a defendant may (after exhausting his administrative remedies) move for reduction of his term of imprisonment based upon "extraordinary and compelling reasons." The Court, after considering the factors enumerated in [18 U.S.C. § 3553\(a\)](#), may grant the motion if extraordinary and compelling reasons warrant the reduction, and such a reduction is consistent with applicable policy statements issued by the Sentencing Commission. *Id.* And pursuant to [U.S.S.G. § 1B1.13\(2\)](#),¹ the Court must also find that the defendant is not a danger to the safety of any other person or to the community.

But the Court must deny the defendant's motion, for two reasons. First,

¹ Section 1B1.13 has not been amended in response to the statutory changes wrought by the [First Step Act of 2018](#), Pub. L. No. 115-391, § 603(b), 132 Stat. 5194 (2018), and so no longer remains "applicable" guidance for the current version of [§ 3582\(c\)\(1\)\(A\)\(i\)](#), but the Court may consider the criteria set forth in [§ 1B1.13](#) to the extent they remain helpful and relevant. [United States v. Jenkins](#), No. 4:15-CR-3079, 2020 WL 2814437, at *3 (D. Neb. May 26, 2020).

as mentioned above, the Court may consider a defendant's motion for compassionate release only "after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." § 3582(c)(1)(A). And the defendant's motion alleges nothing about pursuing administrative remedies. *See* [filing 51](#).

Second, the defendant has identified no factors, such as health conditions, that place him at particular risk for COVID-19. *See* [filing 51](#).² There is, in other words, little to distinguish him from any other federal prisoner. Accordingly, he has not alleged reasons for a sentence reduction that are "extraordinary and compelling."³ Accordingly,

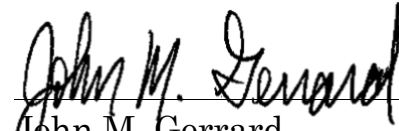
IT IS ORDERED that the defendant's motion for compassionate release ([filing 51](#)) is denied.

² To the extent the defendant is alleging that the conditions of his imprisonment are inhumane, *see* [filing 51 at 1](#), that issue should be raised as a civil rights claim in the district court for the district in which he is confined, the Eastern District of Texas. *See* [Spencer v. Haynes](#), 774 F.3d 467, 469-70 (8th Cir. 2014); *DeSimone v. Lacy*, 805 F.2d 321, 323 (8th Cir. 1986); *see generally* 28 U.S.C. § 1391(b).

³ In addition, the Court notes that the defendant has about 7 years remaining on a roughly 12½-year-sentence for conspiring to distribute a substantial quantify of methamphetamine, and possessing a semiautomatic pistol in the course of doing so. *See* [filing 42](#); [filing 47](#). And the defendant has what can be charitably described as a long and diverse criminal history. *See* [filing 42 at 10-14](#). Given those facts, *any* argument the defendant might make for a sentence reduction, regardless of his medical condition, would be a tough sell when the § 3553(a) factors are considered.

Dated this 30th day of July, 2020.

BY THE COURT:



John M. Gerrard

Chief United States District Judge